

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MERLENE BACCHUS

Plaintiff,

-against-

**DECLARATION OF
KATHRYN E. MARTIN**

THE CITY OF NEW YORK, RENÉE PEPPER and
BOARD OF EDUCATION EMPLOYEES LOCAL 372,
DISTRICT COUNCIL 37, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO,

12 CV 1663(PKC)(MDG)

Defendants.

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KATHRYN E. MARTIN declares, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that the following is true and correct:

1. I am a Senior Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, attorney for Defendants New York City Department of Education and Renée Pepper ("City Defendants") in the above-captioned action.

2. I submit this declaration in support of City Defendants' motion for summary judgment pursuant to Rule 56(a) of the Federal Rules of Civil Procedure.

3. Annexed to this declaration as Exhibits "A" to "MM," "OO" to "SS" and "UU" to "CCC" and "EEE" are documents maintained in the ordinary course of City Defendants' business and excerpts from the transcript of the deposition of Plaintiff Merlene Bacchus, Defendant Renée Pepper, non-party witness Barbara Levy, and non-party witness Colleen O'Donnell. Documents annexed as Exhibits "NN," "TT," (as well as the audio CDs), "DDD," "FFF," and "GGG" were produced by Plaintiff. All of these documents are relied upon and cited in City Defendant's Local Civil Rule 56.1

Statement of Undisputed Material Facts submitted herewith in support of their motion. Copies of these documents and excerpts are as follows:

- A. Second Amended Complaint, filed August 27, 2012, is annexed hereto as Exhibit "A;"
- B. Deposition Transcript excerpts of Plaintiff Merlene Bacchus, dated May 21, 2013, is annexed hereto as Exhibit "B;"
- C. Obituary of Angela Thompson published in the Birmingham News from January 26 – January 27, 2012, is annexed hereto as Exhibit "C;"
- D. Deposition Transcript excerpts of Defendant Renée Pepper, dated June 14, 2013, is annexed hereto as Exhibit "D;"
- E. School Aide Job Description, is annexed hereto as Exhibit "E;"
- F. Letter from Chad B. Pimentel to Cynthia B. Mendoza-Garcia dated December 1, 2011, is annexed hereto as Exhibit "F;"
- G. Lopez Work History, is annexed hereto as Exhibit "G;"
- H. Deposition Transcript excerpts of Barbara Levy, dated June 27, 2013, is annexed hereto as Exhibit "H;"
- I. Deposition Transcript excerpts of Colleen O'Connell, dated June 17, 2013, is annexed hereto as Exhibit "I;"
- J. Report of Reasons for Requesting Medical Examination of Employee Merlene Bacchus from Angela Thompson, is annexed hereto as Exhibit "J;"
- K. Letter dated November 9, 2009 from Hubert Guscott, Manager, HR Connect – Medical Administration to Merlene Bacchus, is annexed hereto as Exhibit "K;"

- L. Memo from Division of Human Resources, HR Connect – Medical Administration to Merlene Bacchus re: Employee Medical Review, is annexed hereto as Exhibit “L;”
- M. Report of Reasons for Requesting Medical Examination of Employee Trina Mixon from Angela Thompson, is annexed hereto as Exhibit “M;”
- N. Memo from Division of Human Resources, HR Connect – Medical Administration to Trina Mixon re: Employee Medical Review, is annexed hereto as Exhibit “N;”
- O. Letter of Instruction to from Renée Pepper Merlene Bacchus dated May 28, 2009, is annexed hereto as Exhibit “O;”
- P. Letter of Instruction from Renée Pepper to Trina Mixon dated May 28, 2009, is annexed hereto as Exhibit “P;”
- Q. Alleged Corporal Punishment and/or Verbal Abuse Report of Investigation dated December 7, 2009, is annexed hereto as Exhibit “Q;”
- R. Student Statement of M.P. dated December 4, 2009, is annexed hereto as Exhibit “R;”
- S. Chancellor’s Regulation A-420, is annexed hereto as Exhibit “S;”
- T. Letter from Angela Thompson to Merlene Bacchus dated February 8, 2010, is annexed hereto as Exhibit “T;”
- U. Corporal Punishment and/or Verbal Abuse Report of Investigation dated December 3, 2009 and Alleged Corporal Punishment and/or Verbal Abuse Report of Investigation dated December 4, 2009, are annexed hereto as Exhibit “U;”

- V. Student Statement of P.H. dated December 2, 2009 and Student Statement of M.S. dated December 4, 2009, are annexed hereto as Exhibit "V;"
- W. Chancellor's Regulation A-421, is annexed hereto as Exhibit "W;"
- X. Alleged Corporal Punishment and/or Verbal Abuse Report of Investigation dated December 4, 2009, is annexed hereto as Exhibit "X;"
- Y. Student Statement of M.A. dated December 4th, annexed hereto as Exhibit "Y;"
- Z. Student Statements of K.Z. and T.W. dated December 4, 2009, is annexed hereto as Exhibit "Z;"
- AA. Alleged Corporal Punishment and/or Verbal Abuse Report of Investigation dated December 1, 2009, is annexed hereto as Exhibit "AA;"
- BB. Student Statement of I.D. dated December 2, 2009, is annexed hereto as Exhibit "BB;"
- CC. Telephone Message Form dated November 30th, is annexed hereto as Exhibit "CC;"
- DD. Letter from Angela Thompson to Merlene Bacchus dated February 2, 2010, is annexed hereto as Exhibit "DD;"
- EE. Alleged Corporal Punishment and/or Verbal Abuse Report of Investigation dated December 7, 2009, is annexed hereto as Exhibit "EE;"
- FF. Student Statement of J.T. dated December 4th, is annexed hereto as Exhibit "FF;"
- GG. Letter from Angela Thompson to Merlene Bacchus dated February 5, 2010, is annexed hereto as Exhibit "GG;"

- HH. Alleged Corporal Punishment and/or Verbal Abuse Report of Investigation dated December 10, 2009, is annexed hereto as Exhibit “HH;”
- II. Student Statement of E.S. dated December 10, 2009, is annexed hereto as Exhibit “II;”
- JJ. Letter from Angela Thompson to Merlene Bacchus dated February 22, 2010, is annexed hereto as Exhibit “JJ;”
- KK. Student Statements of B.B. and R.R. dated December 10, 2009, is annexed hereto as Exhibit “KK;”
- LL. Opinion and Award dated August 19, 2011, is annexed hereto as Exhibit “LL;”
- MM. Disciplinary Letter from Renée Pepper to Merlene Bacchus dated January 19, 2010, is annexed hereto as Exhibit “MM;”
- NN. Plaintiff’s transcript excerpts of January 15, 2010 meeting, certified on September 10, 2012 and CD of audio recording, is annexed hereto as Exhibit “NN;”
- OO. Letter from Merlene Bacchus to Renée Pepper dated January 28, 2010, is annexed hereto as Exhibit “OO;”
- PP. Statement of Renée Pepper dated January 6, 2010, is annexed hereto as Exhibit “PP;”
- QQ. Statement of Colleen O’Connell dated January 8, 2010 and Barbara Levy dated January 8, 2010, are annexed hereto as Exhibit “QQ;”
- RR. Statement of Pria Bala, undated, and Statement of Trina Mixon dated January 19, 2010, are annexed hereto as Exhibit “RR;”

- SS. Warning Letter to File from Renée Pepper to Merlene Bacchus dated April 16, 2010, is annexed hereto as Exhibit “SS;”
- TT. Plaintiff’s transcript excerpts of April 15, 2010 meeting, certified on September 10, 2012 and CD of audio recording, is annexed hereto as Exhibit “TT;”
- UU. Letter from Renée Pepper to Merlene Bacchus dated April 20, 2010, is annexed hereto as Exhibit “UU;”
- VV. Letters from J.M., K.R. and S.P. to Renée Pepper dated February 2, 2011, are annexed hereto as Exhibit “VV;”
- WW. Statement of A.A. dated February 2, 2011, is annexed hereto as Exhibit “WW;”
- XX. Students Statements, annexed hereto as Exhibit “XX;”
- YY. Report of Investigation Summary Letter from Angela Thompson to Merlene Bacchus dated March 11, 2011, annexed hereto as Exhibit “YY;”
- ZZ. Lunch Schedule Memorandum dated November 24, 2010, annexed hereto as Exhibit “ZZ;”
- AAA. Alleged Corporal Punishment And/Or Verbal Abuse Report of Investigation dated February 3, 2011, annexed hereto as Exhibit “AAA;”
- BBB. Grievance Form dated March 15, 2011, annexed hereto as Exhibit “BBB;”
- CCC. Grievance Decision ordered by Chancellor Dennis M. Walcott dated October 21, 2011, annexed hereto as Exhibit “CCC;”
- DDD. Complaint of Alleged Discrimination form dated December 16, 2009, with attached letter dated December 14, 2009, annexed as Exhibit “DDD;”
- EEE. New York State Division of Human Rights Verified Complaint, Case No. 10140309, annexed hereto as Exhibit “EEE” (pages Bates Stamped 055 - 057

were produced by Plaintiff and are more legible copies than pages Bates Stamped D 000121 – D 000123);

FFF. New York State Division of Human Rights Verified Complaint, Case No. 10150957, annexed as Exhibit “FFF;” and

GGG. Determination and Order of Dismissal for Administrative Convenience for case nos. 10140309 and 10150957, annexed as Exhibit “GGG.”

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: New York, New York
April 25, 2014

ZACHARY W. CARTER
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City of New York
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By: _____/s/_____
Kathryn E. Martin
Senior Counsel